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Supreme Court, U.S.
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Nos. 86-1380 and 86-1424

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKANSAS PUBLIC SERVICE COMMISSION, *et al.*,
Petitioners

v.

FEDERAL ENERGY REGULATORY COMMISSION

ARKANSAS POWER & LIGHT COMPANY,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION, *et al.*

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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SUPPLEMENTAL MEMORANDUM FOR MISSISSIPPI INDUSTRIES

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SUPPLEMENTAL MEMORANDUM FOR MISSISSIPPI INDUSTRIES

On March 17, 1987, Mississippi Industries [1] submitted a Memorandum to the Court advising of the pendency of

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[1] Mississippi Industries is a group of industrial customers of Mississipi Power & Light Company in Mississippi. The companies comprising Mississippi Industries are Anderson-Tully Company, Columbia Lumber Company, Crouse-Hinds Lighting, Great Southern Wirebound Box Company, Madison Furniture Industries, Chloride Incorporated Automative Division, Marathon LeTourneau Company, Perma "R" Products, Incorporated, and Cives Steel Company.

petitions for rehearing of the decision of the United States Court of Appeals for the District of Columbia Circuit which is the subject of the instant petitions for a writ of certiorari. Mississippi Industries requested in its Memorandum that consideration of the petitions for a writ of certiorari should be deferred until the pending petitions for rehearing were decided.

On April 3, 1987, the D.C. Circuit issued two orders—one by the panel denying rehearing and another per curiam order directing that the case will be reheard by the Court sitting *en banc*, with "such rehearing to be limited to the issues raised by the dissenting opinion of January 6, 1987." [2] The *en banc* Court also ordered:

> that those parts of Section III(C)(2) of the opinion of January 6, 1987 which address the two issues raised in the dissenting opinion, specifically, pages 76 to the end of the first paragraph on page 80, and the judgment of the same date insofar as it concerns those issues, are hereby vacated.

Rule 20.4 of the Supreme Court Rules provides that when a petition for rehearing has been filed, the time for filing a petition for a writ of certiorari "runs from the date of the denial of rehearing *or of the entry of a subsequent judgment entered on the rehearing*" (emphasis added). The purpose of the rule is to avoid piecemeal presentation of issues in the same case for the Court's consideration. In the instant case, in light of the D.C. Circuit's decision to reconsider the case *en banc*, and its action vacating portions of the panel's opinion and judgment, the goal of Rule 20.4 will be served only if the Court's consideration of the pending petitions for a writ of certiorari is further deferred until "a subsequent judgment on the rehearing" is entered by the D.C. Circuit.

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[2] The two orders are set forth in the Appendix to this Memorandum.

Accordingly, Mississippi Industries requests that consideration of the pending petitions for a writ of certiorari should be further deferred until the D.C. Circuit's decision *en banc* is entered and that the time of Mississippi Industries to respond to the petitions be extended to 30 days from the entry of the D.C. Circuit's *en banc* decision.

Respectfully submitted,

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April 13, 1987

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611

MISSISSIPPI INDUSTRIES

v.

FEDERAL ENERGY REGULATORY COMMISSION

And Consolidated Cases Nos. 85-1613,
85-1615, 85-1616, 85-1617, 85-1618,
85-1619, 85-1620, 85-1621, 85-1623,
85-1624, 85-1626, 85-1637, 85-1640,
85-1647, 85-1712, 85-1719, 85-1772.

[Filed Apr. 3, 1987]

Before: EDWARDS and BORK, *Circuit Judges*; WRIGHT, *Senior CircuitJudge*

ORDER

Upon consideration of the petition for rehearing of the City of New Orleans, Louisiana, the petition of Mississippi Industries, the Mississippi Attorney General and the Mississippi Public Service Commission, and of the petition of Mississippi Power and Light Company, it is

ORDERED, by the Court, that the petitions are denied.

Per Curiam
FOR THE COURT:
GEORGE A. FISHER
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-1611

MISSISSIPPI INDUSTRIES

v.

FEDERAL ENERGY REGULATORY COMMISSION

And Consolidated Cases Nos. 85-1613,
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85-1624, 85-1626, 85-1637, 85-1640,
85-1647, 85-1712, 85-1719, 85-1772.

[Filed Apr. 3, 1987]

Before: WALD, *Chief Judge*; ROBINSON, MIKVA, EDWARDS, RUTH B. GINSBURG, BORK, STARR, SILBERMAN, BUCKLEY, WILLIAMS and D. H. GINSBURG, *Circuit Judges*

ORDER

The suggestion for rehearing *en banc* of the City of New Orleans, Louisiana, the suggestion of Mississippi Industries, the Mississippi Attorney General and the Mississippi Public Service Commission, and the suggestion of Mississippi Power and Light Company were circulated to

the full court. The taking of a vote was requested. Thereafter, a majority of the judges of the court in regular active service voted in favor of the suggestions. Upon consideration of the foregoing, it is

ORDERED, by the Court *en banc*, that these cases will be reheard by the Court sitting *en banc*, such rehearing to be limited to the issues raised by the dissenting opinion of January 6, 1987. It is

FURTHER ORDERED, by the Court *en banc*, that those parts of Section III(C)(2) of the opinion of January 6, 1987, which address the two issues raised in the dissenting opinion, specifically, pages 76 to the end of the first paragraph on page 80, and the judgment of the same date insofar as it concerns those issues, are hereby vacated. It is

FURTHER ORDERED, by the Court *en banc*, that briefs limited to the issues identified in the dissenting opinion of January 6, 1987 shall be filed in accord with the following schedule:

Petitioners' briefs (limited to 15 pages)	May 29, 1987
Brief of respondent (limited to 25 pages) and briefs of supporting intervenors, if any (limited to 10 pages)	July 30, 1987

The parties shall submit 30 copies of each brief filed. In light of the length of the briefing schedule, parties on the same side are expected to circulate drafts of their briefs and to file a joint brief, or briefs, or adopt briefs of other parties, wherever possible. The court looks with extreme disfavor upon numerous briefs presenting repetitive arguments.

The parties are further directed to submit 30 additional copies of all briefs previously filed and 15 copies of the joint appendix by May 29, 1987.

The parties will be advised by future order of the date of argument before the *en banc* court. That date will be sometime after commencement of the court's 1987 term, on September 8, 1987.

Per Curiam
FOR THE COURT:
GEORGE A. FISHER
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk